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CAUSE NO. 12,764

THE STATE OF TEXAS

VS.

BILLY JOE WARDLOW

§ IN THE DISTRICT COURT OF
§
§ TITUS COUNTY, TEXAS
§
§ 76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

DEFENDANT'S MOTION TO SUPPRESS CONFESSION(S)

October 17, 1994

VOLUME 9 of 43 volumes

FILED IN
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

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VS. §
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 §
 § 76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

DEFENDANT'S MOTION TO SUPPRESS CONFESSION(S)

October 17, 1994

VOLUME 9 of 43 volumes

Before Honorable Gary R. Stephens

Judge by Judicial Assignment

(Venue changed from Morris County, Texas)

APPEARANCES

ATTORNEYS FOR THE STATE OF TEXAS:

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6 and

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1 On the 17th day of October, 1994, the
2 above-entitled and numbered cause came on for hearing
3 before said Honorable Court, Judge Gary R. Stephens of
4 Midlothian, Texas, serving by judicial assignment in the
5 District Court of Titus County, Texas, on change of venue
6 from Morris County, Texas, and the following proceedings
7 were had:

8 THE COURT: Okay. Let's get
9 on the record in Cause No. 12,764, "The State Vs. Billy
10 Joe Wardlow."

11 Let the record reflect that Mr. Wardlow
12 is present in Court with both of his appointed attorneys
13 and the State is represented by Mr. Townsend and Mr. Lee.

14 The Court has received a faxed copy of
15 a "Motion to Suppress Evidence, Motion to Suppress and/or
16 Exclude Tonya Fulfer as a Witness" and further to
17 Suppress a Confession(s).

18 Mr. Old, it is my understanding the only
19 thing that you are prepared to go forward on today is the
20 Motion to Suppress Confession(s) that concerns a series
21 of letters written by your client to the Morris County
22 Sheriff, is that correct?

23 MR. OLD: That's correct, Your
24 Honor.

25 And for purposes of the record, it's the

1 motion that we filed October 12th, 1994.

2 THE COURT: That is the motion
3 I'm looking at, filed at 1:37 p.m.?

4 MR. OLD: Yes.

5 We also have pending a motion that has
6 not been heard, that is a motion best characterized as
7 a Motion to Suppress and Arrest and the fruits of that
8 arrest as to items seized and as to admission or
9 confessions made because of the legality of an arrest.

10 THE COURT: That is an out of
11 state arrest, is that correct?

12 MR. OLD: That's correct. We
13 had discussed with the Court I believe on the record
14 because of the need both by the State and the Defendant
15 of witnesses that are not available in this state and I
16 believe all in Madison, South Dakota, that motion be
17 carried until prior to, immediately prior to trial so it
18 may be heard without the witnesses coming at this time.

19 THE COURT: Mr. Townsend, you
20 did state last time that I was here that also you would
21 like to carry that motion so I assume nothing has changed
22 and that motion will be carried to a time prior to
23 beginning of testimony?

24 MR. TOWNSEND: That's correct.

25 MR. OLD: Our reason for

1 pointing that out, we do not want to prejudice ourself
2 to hearing of that motion and the presenting of evidence
3 on it that is not a matter -- the matter of that motion
4 is different from this Motion to Suppress.

5 THE COURT: You will be given
6 time, all the time necessary prior to trial.

7 What I do want to dispose of will be any
8 motions that will effect the State or effect the State
9 or Defense on voir dire, any motions that will not effect
10 voir dire even though they might effect evidence will be
11 heard at some later time but before we begin voir dire
12 I want to hear all motions that might effect the State
13 or Defendant in the voir dire.

14 I assume that's what we are here with
15 is such a motion?

16 MR. OLD: Yes.

17 THE COURT: Mr. Townsend, are
18 you ready to proceed?

19 MR. TOWNSEND: Yes.

20 THE COURT: Mr. Old, are you
21 ready to proceed?

22 MR. OLD: Mr. Hinson and I are
23 ready to go forward.

24 THE COURT: The State may call
25 its first witness.

1 MR. TOWNSEND: The State would
2 call Ricky Blackburn.

3
4 (Witness sworn.)

5
6 MR. OLD: We would invoke the
7 Rule as to the witnesses in this case.

8 Mr. Wardlow would not be subject to the
9 Rule if he chooses to testify.

10 THE COURT: As far as the Rule
11 is concerned as I understand the Rule has been invoked
12 only for purposes of this hearing so far as the Court is
13 concerned so if there's anything done about this case
14 with witnesses after this day if it does not concern the
15 Motion to Suppress it will not be a violation of the
16 Witness Rule.

17 MR. OLD: Yes.

18 THE COURT: Mr. Townsend, do
19 you have any other witnesses that are present that will
20 be testifying at that hearing?

21 MR. TOWNSEND: We don't have
22 any further witnesses present.

23 Now then, I think we cleared this but
24 I want to be real clear on it; we don't have, for
25 instance, a witness that is a handwriting expert because

1 I feel like that may go to admissability of the evidence
2 later on at trial but does not go to the voluntariness
3 of it.

4 THE COURT: I concur with
5 that.

6 MR. TOWNSEND: And, you know,
7 for instance maybe a jailer who may have stuck a letter
8 in the Sheriff's receiving box there, we don't have a
9 person like that.

10 THE COURT: All right.

11 MR. TOWNSEND: You know, we
12 are strictly going -- I think we are just hearing the
13 voluntariness, not the admissability. We wouldn't need
14 witnesses like that I am assuming.

15 THE COURT: As far as the
16 handwriting expert I don't see any need for the
17 handwriting expert today. I do expect to hear from any
18 witnesses from either side that will be pertinent to
19 whether or not the letter writing or whatever occurred
20 was voluntary. And I don't know where that is going to
21 come from but if we need some witnesses we don't have
22 here we will recess until you get them, the same for Mr.
23 Old on any motions he has.

24 Now, Mr. Old, let me get clear on
25 invoking the Rule; are you going to have any witnesses

1 today other than Mr. Wardlow?

2 MR. OLD: No, Your Honor. Not
3 that I'm aware of at this time, I don't have them present
4 nor do I know who they would be.

5 THE COURT: At this time I
6 would like to go ahead and instruct him.

7
8 (Defendant sworn.)

9
10 THE COURT: You may lower your
11 hand and be seated.

12 Now, there's a Rule of Evidence invoked
13 that will require all witnesses in this hearing to not
14 discuss any matters that are brought up in this hearing.
15 I don't want you to talk to any other witnesses or
16 potential witnesses about the issues involving the
17 alleged confession or letter.

18 Now, Mr. Wardlow, you certainly may talk
19 to your attorney and, Sheriff, you certainly may talk to
20 the District Attorneys but I don't want either one of
21 these two witnesses talking to each other about this
22 hearing nor any third party that is not an attorney.

23 Any question about the Rule from either
24 side?

25 All right, Mr. Townsend, you may

1 proceed.

2
3 RICKY BLACKBURN

4 was called as a witness and, having been first duly sworn
5 by the Court, testified as follows:

6
7 DIRECT EXAMINATION

8 BY MR. TOWNSEND

9
10 Q State your name, please.

11 A My name is Ricky Blackburn.

12 Q What is your occupation?

13 A Sheriff of Morris County.

14 Q How long have you been Sheriff of Morris
15 County?

16 A A little over two -- two years.

17 Q Okay. Have you known the Defendant in this
18 case, Billy Wardlow, prior to today?

19 A Yes.

20 Q How long have you actually known him?

21 A Eight, nine or ten years.

22 Q Okay. What was the first time -- the murder
23 the subject of this criminal investigation occurred
24 in 1993 I believe, when was that exactly, I believe it
25 was --

1 A I don't have the exact date. I would have to
2 go back, see if I can find it.

3 Q I believe it was June 14th, does that sound
4 right?

5 A Yes. That sounds close.

6 Q When was the first time -- what was the
7 occasion for the first time you saw Mr. Wardlow after
8 this murder had occurred?

9 A It was in detention in Madison, South Dakota.

10 Q Did you go there along with a couple of other
11 officers to pick them up?

12 A Myself and Game Warden Billy Dodd, Highway
13 Patrolman David McFarland journeyed to South Dakota.

14 Q When you first saw Mr. Wardlow what did you do?

15 A I read him his rights.

16 Q When you say "read him his rights", for the
17 record what "rights" are you talking about?

18 A His Miranda Warnings.

19 Q And I think we all know what those are but for
20 the record what would you have told him?

21 A "He had the right to remain silent, that he was
22 under arrest for capital murder, anything he said could
23 and would be used against him in a court of law, if he
24 didn't have an attorney one would be appointed to
25 represent him, any statements he made would be made

1 against him -- would be used against him."

2 Q And after reading him those Miranda Rights did
3 Mr. Wardlow wish to talk to you?

4 A No. He did not.

5 Q And did he request an attorney?

6 A Yes.

7 Q Okay. At that time did you cease questioning
8 him?

9 A I did.

10 Q Have you since that time up until this day
11 today ever questioned him about this murder?

12 A No. I have not.

13 Q Sheriff Blackburn, Morris County population
14 wise in relationship to most of the counties in Texas,
15 Morris County is pretty small, isn't it?

16 A Yes. It is.

17 Q And it is not uncommon for you I would assume
18 to know many of the prisoners in your county jail?

19 A The majority of them. Yes.

20 Q Sort of like you know Mr. Wardlow?

21 A That's correct.

22 Q Do you have occasion to visit with those
23 inmates from time to time?

24 A Yes. I do.

25 Q Do you make an occasion to visit with an inmate

1 if they request to see you?

2 A Yes. I do.

3 Q Is that something you do routinely?

4 A Pretty well so. Yes.

5 Q Is that -- do you feel as if that sort of
6 alleviates some jail problems if you can talk to them
7 about what they might be unsatisfied about sometimes?

8 A Yes. I do.

9 Q Since Mr. Wardlow has been incarcerated in your
10 county jail have you visited with him on several
11 occasions?

12 A Yes. I have.

13 Q Have those occasions been at his request?

14 A Yes. They have.

15 Q Have you in any way when you were visiting with
16 Mr. Wardlow, have you kind of laid down your own set of
17 ground rules with him so far as what things you will
18 discuss and what things you won't discuss?

19 A Yes. I have.

20 Q And what sort of ground rules have you told
21 Billy about?

22 A We would not get into the inner workings of the
23 case unless his attorney was present.

24 Q What sort of matters have you talked to him
25 about?

1 A Well, we have conditions there in the jail
2 while he was a volunteer fireman there in Cason, about
3 life in general.

4 Q Have you gotten a request either verbally or
5 in writing of different sorts from Mr. Wardlow?

6 A Yes. I have.

7 Q Have you been able to honor certain of those
8 requests?

9 A Some of them. Yes.

10 Q Have there been other requests that you felt
11 like you couldn't honor them?

12 A Actually the only request that I can remember
13 Billy wanting, he would request me move him into a single
14 cell occasionally to get his thoughts straightened out
15 then he would request to be moved back into the general
16 population at times.

17 He had -- that was granted.

18 And he had requested the use of a radio
19 approximately a month and a half ago.

20 At first that request was denied for the
21 simple reason that I provided a radio for one I would
22 have to provide it for all.

23 Q Okay.

24 A And after thinking about it I realized we have
25 cable there in our jail, one or more of the stations

1 probably has music on the stations so I felt we could
2 safely provide Billy a radio to listen to music without
3 having to furnish all the rest of the cells a radio.

4 Q That was because he had the TV and therefore
5 had a radio?

6 A That's correct.

7 Q Mr. Wardlow's cell that he was in at that time,
8 was it not equipped with a TV?

9 A No. It was not.

10 Q Mr. Blackburn did there ever come a time when
11 Mr. Wardlow requested to talk to you I believe in a
12 letter -- may I approach the witness, Your Honor?

13 THE COURT: You may.

14 MR. TOWNSEND: Do you
15 recognize this letter? (Indicating)

16 THE WITNESS: Yes. I do.

17 Q (BY MR. TOWNSEND) And could you tell the Court
18 what that is?

19 A This is a request that was addressed to Patsy
20 Martin and forwarded --

21 MR. OLD: We object to the
22 witness testifying to a document until it's offered in
23 evidence.

24 THE COURT: I will sustain the
25 objection. I will let you identify what, who sent you

1 the letter and when the letter was sent or received but
2 don't tell me about the contents of the letter.

3 THE WITNESS: Okay. It was
4 sent by Billy Wardlow on 1/25/94.

5 MR. TOWNSEND: Who was the
6 letter to, to you or to --

7 THE WITNESS: The letter was
8 addressed to our chief dispatcher/jailer requesting --

9 THE COURT: You can't tell me
10 what the request was but again, sir, I missed the date;
11 what was the date?

12 THE WITNESS: January 25th,
13 '94.

14 THE COURT: Thank you.

15 MR. TOWNSEND: Mark it.

16
17 (Off the record discussion.)

18
19 (State's Pre-Trial Exhibit Number 1 was
20 marked for identification.)

21
22 MR. TOWNSEND: Your Honor, I
23 would like to offer this into evidence as "State's
24 Exhibit 1" just for purposes of this hearing today.

25 I believe that they had a copy of that.

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(Handed to Mr. Old.)

MR. OLD: Your Honor, we do
not object to it.

THE COURT: State's 1 is
admitted for purposes of this hearing only.

(State's Pre-Trial Exhibit Number 1 was
received in evidence for purposes of the Suppression
Hearing.)

MR. TOWNSEND: Sheriff, I show
you what has been marked as "State's Exhibit 1" and do
you recall seeing that?

(Handed to the witness.)

THE WITNESS: Yes. I do.

MR. TOWNSEND: And as a result
of that did you find time at some point after that to
visit based -- first of all what does the letter say
basically?

MR. OLD: Your Honor, I would
object to him paraphrasing the letter. It's a short
letter and it says what it says.

1 THE COURT: Sustained.

2 Tender the letter to me, let me re-read
3 it again.

4
5 (Handed to the Court.)
6

7 MR. TOWNSEND: Okay. Sheriff,
8 you did have an opportunity to read the letter at on or
9 about the 25th of January?

10 THE WITNESS: Somewhere --
11 yes.

12 Q (BY MR. TOWNSEND) After reading the letter did
13 you find time to visit with Mr. Wardlow?

14 A Yes, sir. I did.

15 Q Would it have been that day or a week later or
16 do you recall?

17 A I don't recall the exact day.

18 Q Okay. But at some time did you -- sometime
19 after that did you visit with Mr. Wardlow?

20 A Yes. I did.

21 Q In visiting with Mr. Wardlow did he attempt to
22 discuss this case with you?

23 A Yes, sir.

24 Q When he attempted to discuss this case with you
25 what did he say?

1 A He was wanting to tell me about the case and
2 I told him, "Billy, we can't talk about the inner
3 workings of the case without your attorney present."

4 Q Did he want to tell you about the case or did
5 he want to write down what you might call a "confession"
6 or was he specific?

7 A No.

8 We were talking and Billy was indicating
9 that he was having problems -- problem sleeping at night,
10 he was having nightmares and was having just problems
11 dealing with everything.

12 And we got into a discussion how best
13 he might be able to relieve himself of the nightmares and
14 of the troubles that he was having.

15 I suggested to Billy the best way to
16 solve a problem such as this is to confront it, you can't
17 sidestep it, you can't walk around it, the best way to
18 meet it is to simply meet it head on.

19 Many times whenever I'm having problems
20 I can sit down and write out, define what my problem is
21 and I can sit down and write the solution to that problem
22 and many times we know the solution to our own problems
23 and suggested that Billy do that.

24 Q So you suggested that he simply write down his
25 feelings or about what was bothering him?

1 A That's correct.

2 Q And did you suggest what he should do with that
3 after he had written it down?

4 A I told him he should destroy what he had
5 written down once he had written it down and looked and
6 everything and confronted it.

7 Q Do you know if he actually did make such a
8 writing?

9 A No. I do not.

10 Q You never saw such a writing?

11 A No, sir. I did not.

12 Q Did you ever look for such a writing in his
13 cell?

14 A No, sir. I did not.

15 Q Did you ever request anyone else to search his
16 cell to try to find any particular writing?

17 A No.

18 Q After -- Ricky, in your position as Sheriff is
19 it unusual for you to I guess you might say "counsel"
20 with a jail inmate as far as their personal problems or
21 try to help them out in dealing with some sort of
22 personal problem?

23 A No. It is not unusual and I do it with other
24 inmates.

25 Q Is that something that you just -- sort of,

1 sort of is your personality to do?

2 A A lot of times an inmate gets in jail, they
3 won't have anybody that they can talk to, a lot of these
4 basic problems that an inmate has has been experienced
5 by other people, a lot of times the only thing that
6 changes really is the name, and sit down with some
7 inmates and a lot of times they just simply want to talk.

8 Q So in talking to Billy about writing down and
9 thinking out what was bothering him, that was what you
10 were doing?

11 A That's correct.

12 Q Just sort of trying to help him out with his
13 personal conflicts?

14 A Yes, sir.

15 Q Did you in any way ask him to write you a
16 confession?

17 A No. I did not.

18 MR. OLD: Your Honor, I
19 object. It calls for a conclusion.

20 THE COURT: Sustained.

21 MR. TOWNSEND: Did you in any
22 way ask him to write you anything?

23 THE WITNESS: No. I did not.

24 Q (BY MR. TOWNSEND) Did you encourage or did you
25 try to encourage him to do anything other than sort of

1 help himself out of his personal dilemma?

2 A No. I did not.

3 Q At some time after January the 25th when you
4 talked to Billy on January the 25th was he in a cell by
5 himself or was he in a cell with other individuals?

6 A I don't know that I talked to Billy on January
7 25th.

8 Q I'm sorry. That's my mistake, Your Honor.

9 After receiving the letter on January
10 the 25th I believe you testified that you don't recall
11 exactly when you actually talked to him?

12 A That's correct.

13 Q But whenever that was was he in a cell by
14 himself or was he in a cell with others?

15 A I would have to go back and look but at that
16 time that I talked to Billy regardless of which cell he
17 was in I talked to him there in the chief dispatcher
18 jailer's office there within the confines of the jail and
19 it was later in the evening.

20 Q So he wasn't in his cell when the conversation
21 took place?

22 A No. He was not.

23 MR. TOWNSEND: May I approach
24 the witness, Your Honor?

25 THE COURT: You may.

1 Sheriff, when you talk to other
2 prisoners do you do so in their cells or in this office?

3 THE WITNESS: No, sir. I will
4 take them either into the dispatcher/jailer's office
5 which is located right there, like I say, within the
6 confines of the jail close to the dispatch office and
7 that's where ninety-nine percent of them are talked to,
8 either there or in some office.

9 THE COURT: Thank you.

10
11 (State's Pre-Trial Exhibit Number 2 was
12 marked for identification.)

13
14 MR. TOWNSEND: I show you what
15 has been marked "State's Pre-Trial 2" and ask you if you
16 can identify that?

17
18 (Handed to the witness.)

19
20 THE WITNESS: Yes, sir. It's
21 another -- another note from Billy.

22 MR. TOWNSEND: Who is the note
23 to?

24 THE WITNESS: It's to myself.

25 Q (BY MR. TOWNSEND) And what is the date on that

1 note?

2 A 2/24/94.

3 Q Would that have been the date you received it
4 or the date it was written or would those dates be the
5 same?

6 A It was the date that I was given a copy of it.

7 MR. TOWNSEND: Okay. Your
8 Honor, for purposes of this hearing I would like to offer
9 in State's Exhibit 2.

10
11 (Handed to Mr. Old.)

12
13 MR. OLD: Your Honor, can I
14 take the witness on voir dire examination about the
15 exhibit?

16 THE COURT: You may.

17
18 VOIR DIRE EXAMINATION

19 BY MR. OLD

20
21 Q Sheriff, let me give you a copy of the exhibit
22 back.

23 Is that "2/24/94" date in your
24 handwriting?

25 A No, sir. It isn't.

1 Q Do you know of your own knowledge whose
2 handwriting it is?

3 A Yes, sir. It appears to be that of Chief
4 Dispatcher/Jailer Patsy Martin.

5 Q "It appears to be" I assume you are not a
6 handwriting expert but I assume it appears to be from
7 looking at other things?

8 A Yes, sir.

9 Q Do you know for a fact that date was written
10 2/24/94?

11 A I did not personally observe.

12 Q Okay. Do you know when this exhibit first came
13 to your attention by date?

14 A No, sir. I do not.

15 MR. OLD: Your Honor, we would
16 object to portions of the exhibit, the date "2/24/94" and
17 the copy given by the Sheriff that he was testifying to,
18 things that are hearsay to him which he does not have
19 personal knowledge and specifically the mentioning of
20 that date.

21 THE COURT: Mr. Old, I assume
22 that all of the -- or let me just ask Mr. Townsend before
23 I make my assumption; Mr. Townsend, are the letters that
24 you are offering and intending to offer during this
25 hearing letters that are contained in the Morris County

1 Sheriff's Department and letters received by them from
2 Mr. Wardlow?

3 MR. TOWNSEND: Yes.

4 THE COURT: Mr. Old, I believe
5 that all of this could be proved up as a business record,
6 I'm not going to require the State to do so for purposes
7 of this hearing.

8 Whether I admit them before the jury or
9 not is another issue but I'm going to overrule your
10 objection.

11 I'm going to admit this document only
12 for record purposes, for purposes of this hearing and I
13 don't want the State to believe that I would rule the
14 same way if a jury were here. If it's not properly
15 authenticated or proven up it won't come in whether it's
16 admissable or not.

17 So with that explanation I'm going to
18 let State's Exhibit 2 in over objection.

19 MR. TOWNSEND: That was my
20 understanding, just for purposes of this hearing.

21
22 (State's Pre-Trial Exhibit Number 2 was
23 received in evidence for purposes of this hearing.)
24

25 MR. TOWNSEND: Sheriff

1 Blackburn, look at State's Exhibit 2, is that a letter
2 that you recall reading?

3 THE WITNESS: Yes. It is.

4 Q (BY MR. TOWNSEND, CONTINUING DIRECT
5 EXAMINATION) And that was on the 24th of February?

6 Do you have any records there, records
7 that would reflect when -- I believe you were asked to
8 bring those today, records that would reflect when Mr.
9 Wardlow was in a cell with other people and when he was
10 in a cell by himself?

11 A Yes, sir. I do.

12 Q Okay. And could you refer to those and when
13 you -- have you got them there where you can see them?

14 A Yes. I do.

15 Q After reading that letter was there anything
16 in that letter that alarmed you?

17 A Yes, sir. There is.

18 Q And did it alarm you, did it make you concerned
19 that other jail inmates might be harmed by Mr. Wardlow?

20 A Yes. It did.

21 Q Did you -- did you take -- I guess I'll call
22 it "preventative measures?"

23 A "Security of the jail." Yes, sir.

24 Q And what did you do as a result of that letter?

25 A He was placed in a single cell, Billy was.

1 Q He was placed into the single cell based on
2 your reports?

3 When was that done?

4 A On February 25th he was placed in a single
5 cell.

6 Q And how long did he remain in a single cell?

7 A Until March the 18th.

8 MR. TOWNSEND: Okay. I show
9 you what has been -- mark that, please.

10
11 (State's Pre-Trial Exhibit Number 3 was
12 marked for identification.)

13
14 MR. TOWNSEND: I show you what
15 has been marked as "State's Pre-Trial Exhibit 3" and ask
16 you if you can identify that?

17
18 (Handed to the witness.)

19
20 (State's Pre-Trial Exhibit Number 4 was
21 marked for identification.)

22
23 THE WITNESS: Yes. This is
24 a letter I received by Billy.

25 MR. TOWNSEND: Is it a letter

1 addressed to you?

2 THE WITNESS: Yes.

3 Q (BY MR. TOWNSEND) On the 28th of February I
4 believe of '94?

5 A Yes.

6 MR. TOWNSEND: Okay. I offer
7 State's Exhibit 3 in evidence for purposes of this
8 hearing, Your Honor.

9
10 (Off the record discussion.)

11
12 MR. OLD: As to State's
13 Exhibit Number 3 I would like to take the witness on voir
14 dire.

15 THE COURT: Back on the
16 record.

17
18 VOIR DIRE EXAMINATION

19 BY MR. OLD

20
21 Q Sheriff, I believe you testified that you
22 received Exhibit 3, State's Exhibit 3 on the 25th?

23 A Yes, sir.

24 Q That would be the 25th of February?

25 A Yes. The 28th.

1 Q Excuse me. You testified -- you testified to
2 the District Attorney you received it on the 25th was my
3 question?

4 A Well, if I did.

5 Q So that's what you testified to?

6 A If I did I was in error, it was the 28th.

7 Q How do you know it was the 28th?

8 A The letter was postmarked the 25th that Billy
9 had gotten the -- another letter in, had used the same
10 envelope and this was three days later, it was on the
11 28th.

12 Q Did this letter, the envelope, how did you
13 receive it?

14 A It was placed in my mailbox.

15 Q When you say "placed in your mailbox" do you
16 mean by an agent of the Post Office Service or --

17 A Inner office.

18 Q "Inner office?"

19 A Yes.

20 Q How do you know you got it on the 28th?

21 A I believe it was marked as the date of receipt.
22 And it was signed -- see if it was not signed by Billy
23 Wardlow on the 28th.

24 Q You are saying that the statement -- that Mr.
25 Wardlow dated it the 28th?

1 A Yes, sir.

2 Q Can I have a verbal response?

3 A Yes.

4 Q I will be honest with you, I had read at the
5 top of it as being the 23rd and I have never seen
6 anything except a reprocessed copy or Xeroxed copy, I
7 can't tell whether that is an "8" or "3", since you
8 testified to the 28th --

9
10 (Handed to the witness.)

11
12 THE WITNESS: Let's see. It's
13 not there but it is the -- it is the 28th.

14 MR. TOWNSEND: You are saying
15 you have personal knowledge of that or are you guessing?

16 THE WITNESS: I'm saying
17 that's what's on the letter.

18 Q (BY MR. TOWNSEND) No. I'm talking about the
19 date that you received it.

20 Do you know in fact what day you
21 received it?

22 A I did not make a note on the date that it was
23 received. It was forwarded on to the District Attorney
24 the same date.

25 MR. OLD: For purposes of voir

1 dire we pass the witness.

2 THE COURT: Have you offered
3 State's Exhibit 3?

4 MR. TOWNSEND: I don't believe
5 I have but I will at this time.

6 THE COURT: Any objection, Mr.
7 Old?

8 MR. OLD: Your Honor, I am
9 -- the copy I have I have read as the 23rd and I think
10 that anyone that would have viewed the document that I
11 have would agree it's something that reasonable minds
12 would differ, I would like to know what the date of the
13 original instrument is, the "28th" or "23rd?"

14 THE COURT: I'm going to admit
15 State's Exhibit 3. I cannot tell, it looks to me like
16 "the 28th" but I certainly don't know so I'm going to
17 instruct the District Attorney to make further inquiry
18 as to the date, look at the original and either produce
19 the original or satisfy Mr. Old as to what the original
20 date is on that letter subject to that.

21 MR. TOWNSEND: We can produce
22 that, Your Honor.

23 THE COURT: It's admitted.

24
25 (State's Pre-Trial Exhibit Number 3 was

1 received in evidence.)

2
3 MR. TOWNSEND: Sheriff
4 Blackburn, on what has been marked as "State's Exhibit
5 3" you have identified as having seen in February of
6 1994, after receiving that I believe you said you brought
7 it to our office?

8 THE WITNESS: That's correct.

9 Q (BY MR. TOWNSEND) The District Attorney's
10 Office?

11 I show you what has been marked as
12 "State's Exhibit 4" and ask you if you can identify that?

13
14 (Handed to the witness.)

15
16 THE WITNESS: Yes, sir. I
17 can.

18 MR. TOWNSEND: What is that?

19 THE WITNESS: The envelope
20 that I received the letter in.

21 Q (BY MR. TOWNSEND, CONTINUING DIRECT
22 EXAMINATION) Okay.

23 A Has initials "R.G." which would be the initials
24 of a jailer by the name of Robby Gray. (Indicating)

25 MR. TOWNSEND: Okay. I offer

1 State's Exhibit 4.

2
3 (Handed to Mr. Old.)

4
5 MR. OLD: Your Honor, we have
6 no objection.

7 Before we go any further I would like
8 to get a copy of this exhibit.

9 THE COURT: I will admit
10 State's Exhibit 4 and order the State to make a copy, I'm
11 not sure whether it's on the record or not but I want the
12 record to reflect that all the exhibits being offered
13 today are copies of the originals so Mr. Townsend I
14 assume you have all the originals in your possession, is
15 that correct?

16
17 (State's Pre-Trial Exhibit Number 4 was
18 received in evidence.)

19
20 MR. TOWNSEND: Sheriff
21 Blackburn does, Your Honor.

22 THE COURT: Sheriff, you have
23 all of them?

24 THE WITNESS: They are in our
25 evidence locker.

1 MR. TOWNSEND: I think we can
2 probably proceed with the question when we are doing that
3 if Mr. Old has no objection.

4 THE COURT: You may proceed.

5 MR. TOWNSEND: What has been
6 marked as "State's Exhibit 4", what was that?
7 (Indicating)

8 THE WITNESS: A letter that
9 Billy had written to me.

10 Q (BY MR. TOWNSEND) That was in the envelope?

11 A Yes. The envelope.

12 Q The envelope appeared or a copy we saw appears
13 to be the type of envelope that you would use to mail
14 things through the U.S. Mail, did you in fact receive
15 this letter through the U.S. Mail?

16 A No. I did not.

17 Q Okay. Was it received by you through the --
18 received by you through the normal jail process?

19 A Yes. It was.

20 Q What was that?

21 A I guess the inmate gave the jailer a note.

22 MR. OLD: Your Honor, we would
23 object to the question, it appears he does not have
24 personal knowledge.

25 He said he "guessed."

1 THE COURT: Sustained.

2 MR. TOWNSEND: Do you know of
3 the normal process?

4 THE WITNESS: An inmate will
5 write a letter, write a request, give it to the jailer,
6 the jailer will, they will --

7 THE COURT: Excuse me,
8 Sheriff.

9 MR. OLD: "The normal process"
10 is not what is in question, it's how this letter came to
11 him.

12 THE COURT: I believe the
13 question, though, was trying to get into normal process
14 so make it clear, Mr. Townsend.

15 MR. TOWNSEND: Yes.

16 THE COURT: Objection
17 overruled.

18 MR. TOWNSEND: What is the
19 standard procedure for receiving inmate communication,
20 written communication from an inmate?

21 THE WITNESS: The inmate will
22 give the note or request to the jailer, the jailer will
23 then forward it to the proper person.

24 Q (BY MR. TOWNSEND) Do you have a box there that
25 an inmate wrote a note or letter to you, do you have a

1 box in which the letter was placed?

2 A I have an inner office box where the jailer
3 would place it. Yes.

4 Q Is that where you received this letter?

5 A That's correct.

6 MR. TOWNSEND: Your Honor, on
7 what has been marked "State's Exhibit 4" there is some
8 writing up in the corner that indicates that this
9 envelope came from the U.S. -- United States District
10 Court in Marshall, Texas and that appears to be scratched
11 out.

12 Was that scratched out when you received
13 the letter?

14 THE WITNESS: Yes. It was
15 scratched out.

16 Q (BY MR. TOWNSEND) And is there any change in
17 this envelope from the way it was that particular day?

18 A No.

19 Q Okay. So when you received the letter it did
20 not come through the U.S. Mail, it had just come through
21 the process through the jail?

22 A That's correct.

23 Q As the result of receiving that letter I assume
24 after reading it you considered that letter to be some
25 sort of confession?

1 A Yes. I did.

2 Q As the result of that, receiving that letter
3 did you take any action to in any way reward Mr. Wardlow,
4 do anything for him at that time?

5 A No. I didn't.

6 MR. TOWNSEND: Okay.

7
8 (State's Pre-Trial Exhibit Number 5 was
9 marked for identification.)
10

11 MR. TOWNSEND: I show you what
12 has been marked as "State's Pre-Trial Exhibit 5" and ask
13 you if you can identify that?
14

15 (Handed to the witness.)
16

17 THE WITNESS: This is a letter
18 addressed to me from Billy.

19 MR. TOWNSEND: When did you
20 receive that letter, if you know?

21 THE WITNESS: The date is
22 September 11th, it would have been September the 12th.

23 Q (BY MR. TOWNSEND) What year, Sheriff?

24 A This year.

25 MR. TOWNSEND: I offer this

1 into evidence, Your Honor.

2
3 (Handed to Mr. Old.)

4
5 MR. TOWNSEND: Any objection?

6 THE COURT: Any objection?

7 MR. OLD: None, Your Honor.

8 THE COURT: State's 5 is
9 admitted.

10 Let me see "3" again, please, Counsel.

11
12 (State's Exhibit Number 3 was handed to
13 the Court.)

14
15 (State's Pre-Trial Exhibit Number 5 was
16 received in evidence.)

17
18 THE COURT: And "5."

19
20 (State's Exhibit Number 5 was handed to
21 the Court.)

22
23 THE COURT: I just wanted to
24 make sure everything I had in here was in your exhibit.

25 Proceed.

1 "5" is admitted.

2 MR. TOWNSEND: Referring to
3 Exhibit 5, Sheriff Blackburn, how was it received,
4 through U.S. Mail or through the jail?

5 THE WITNESS: Through the
6 jail.

7 Q (BY MR. TOWNSEND) Again as the result of
8 receiving State's Exhibit 5 through the mail did you do
9 anything to encourage or compensate Mr. Wardlow for
10 having provided you with that letter?

11 A No. I did not.

12 Q In regard to State's Exhibit 3 and State's
13 Exhibit 5, prior to receiving either one of those letters
14 did you ever promise Mr. Wardlow anything?

15 A No. I did not.

16 Q Did you ever give him anything?

17 A No. I did not.

18 Q Did you ever -- let me just ask you this in
19 regard to State's Exhibit 3, when you received that in
20 the mail or through the jail mail service were you
21 surprised?

22 A Extremely.

23 Q As to State's Exhibit 5, were you also
24 surprised?

25 A Yes, sir. I was.

1 Q Did you have any reason to anticipate receiving
2 either of those letters?

3 A No. I did not.

4 MR. OLD: Object to the
5 question, Your Honor, it's not material or relevant
6 whether he expected to receive them or not. I mean it's
7 calling for him to really speculate on Mr. Wardlow if he
8 wrote those letters.

9 THE COURT: Sustained.

10 MR. TOWNSEND: Your Honor, can
11 we go off the record for a moment?

12 THE COURT: You may.

13
14 (Off the record discussion.)

15
16 (State's Pre-Trial Exhibit Numbers 6
17 through 42, including 33A were marked for
18 identification.)

19
20 (Recess.)

21
22 THE COURT: Sheriff, if you
23 will get back on the stand we'll proceed.

24 Okay. Back on the record. The State
25 may proceed.

1 MR. TOWNSEND: Your Honor,
2 before we proceed with the questioning I would like the
3 Court to take judicial notice from the Court's records
4 when Mr. Wardlow was first appointed an attorney, I
5 believe the records, the Court records will reflect that
6 that was sometime in June of, I believe that's going to
7 be reflect that was June 24th of '93.

8 THE COURT: I will take
9 judicial notice of the contents of the Court's file and,
10 Counsel, I will assume that the date that you are giving
11 me is correct.

12 Mr. Old, do you dispute the date?

13 MR. OLD: Your Honor, it was
14 in June of 1993.

15 THE COURT: June of '93 was
16 when the Defendant was first appointed an attorney.

17 MR. TOWNSEND: I believe June
18 24th was --

19 THE COURT: June 14th was the
20 date of --

21 MR. TOWNSEND: Ten days after
22 the date of the offense.

23 MR. OLD: Could you also along
24 with that take judicial notice that it was not I?

25 THE COURT: I will do so. I

1 believe it was Vernard Solomon that was originally
2 appointed on June 24th, 1993.

3 The Court will take judicial notice of
4 the same and Mr. Old, I understand you were appointed by
5 Judge Thorpe and that would have been sometime this past
6 summer or spring?

7 MR. OLD: I believe it was
8 July, it was late June or early July.

9 THE COURT: Of 1994.

10 MR. TOWNSEND: I don't have
11 that with me.

12 THE COURT: It's in the
13 Court's file.

14 Approximately a year after the first
15 appointment?

16 MR. OLD: Yes, Your Honor.

17 THE COURT: Mr. Townsend, you
18 may proceed.

19 MR. TOWNSEND: Looking at
20 your jail records there, Sheriff, do you note on there
21 when -- and I'm not talking about phone calls but just
22 when Mr. Solomon made personal visits to Mr. Wardlow?

23 THE WITNESS: Just a second.
24 On June 20th, '93, on 12/27/93 Vernard Solomon, on 7/5/94
25 Bird Old, III, 8/19/94, Bird Old, III.

1 Q (BY MR. TOWNSEND) Sheriff, during the entire
2 time that Mr. Wardlow has been incarcerated in the jail
3 I believe his parents have been Morris County residents,
4 is that correct?

5 A Yes, sir.

6 Q They have made, I am not going to ask you to
7 go back into your records and go through all of them but
8 his folks, they have both made numerous visits to Mr.
9 Wardlow?

10 A Yes, sir.

11 Q And I believe he may have had other visitors
12 as well, is that correct?

13 A Yes, sir.

14 Q How would you characterize the visits with his
15 parents, was this weekly, monthly?

16 A Daily.

17 Q "Daily?"

18 And those visits haven't been restricted
19 in any manner, have they, other than to the jail
20 facilities themselves?

21 A Correct.

22 Q He has been allowed to see them on a daily
23 basis?

24 A Prior to the last month and a half that he was
25 there.

1 Q What happened?

2 A It was restricted as far as his visitation,
3 required two guards to be on duty at the time they
4 visited him.

5 Q Okay. Sheriff Blackburn, in your discussions
6 with Mr. Wardlow you have made it clear to him that you
7 won't discuss the case with him, is that correct?

8 A That's correct. Yes, sir.

9 MR. TOWNSEND: Your Honor, I
10 would like to offer State's Exhibits 6 through 42.

11 And I believe we talked about that off
12 the record.

13 THE COURT: This is the group
14 of letters or notes?

15 MR. TOWNSEND: Group of
16 letters, this is, State's Exhibit 6 is actually the
17 letter from the Sheriff to Billy Wardlow, the other
18 exhibits are letters from Mr. Wardlow to either the
19 Sheriff or the jailer.

20 THE COURT: Mr. Old, do you
21 have any objection?

22 I know you may have some objections to
23 individual letters based on materiality, do you have an
24 objection to the group as a whole being admitted for
25 purposes of this hearing?

1 MR. OLD: Your Honor, my
2 objection would be the Sheriff has not identified them
3 as a group, subject to that being done I don't think I
4 have an objection.

5 "6" is a different predicate, it's a
6 letter from him.

7 THE COURT: Prove up "6" then
8 "7 through 42."

9 MR. TOWNSEND: Sheriff, I show
10 you what has been marked as "State's Exhibit 6" and ask
11 you if you can identify that?

12
13 (Handed to the witness.)

14
15 THE WITNESS: Yes. I can.

16 MR. TOWNSEND: What is that?

17 THE WITNESS: It's a letter
18 I had written to Mr. Wardlow. It was dated August 17th.

19 Q (BY MR. TOWNSEND) Of this year?

20 A Of 1994. Yes.

21 MR. TOWNSEND: I offer State's
22 Exhibit 6 at this time, Your Honor.

23 MR. OLD: No objection, Your
24 Honor.

25 THE COURT: State's Exhibit

1 6 is admitted.

2
3 (State's Pre-Trial Exhibit Number 6 was
4 received in evidence.)
5

6 MR. TOWNSEND: Sheriff, I show
7 you what has been marked as "State's Exhibit 7 through
8 State's Exhibit 42" and ask you if you can identify those
9 as a group?
10

11 (Handed to the witness.)
12

13 THE WITNESS: Notes, requests
14 and letters made by Billy Wardlow.

15 MR. TOWNSEND: And who are
16 they either addressed to, you or the chief jailer, is
17 that correct?

18 THE WITNESS: Either to myself
19 or Patsy Martin.

20 MR. TOWNSEND: Offer them in
21 evidence, Your Honor.

22 THE COURT: Any objection?

23 MR. OLD: No objection.

24 THE COURT: "7 through 42" are
25 admitted.

1 (State's Pre-Trial Exhibits 7 through
2 42, including 33A were received in evidence.)
3

4 MR. TOWNSEND: Sheriff, in "6"
5 what has been marked "6", what is marked as "State's
6 Exhibit 6" is a letter from Mr. Wardlow from you, I
7 believe there is something in that letter where you
8 indicated again to Mr. Wardlow basically to follow the
9 advice of his attorney and keep a low profile?

10 THE WITNESS: That's correct.
11 Yes, sir.

12 Q (BY MR. TOWNSEND) So you are once again
13 advising him to "Keep his mouth shut", basically?

14 A Yes.

15 Q In State's Exhibit 6 one of the things I note
16 mentioned there was something about you carrying Mr.
17 Wardlow to be baptized?

18 A Yes, sir.

19 Q Tell us as best you can recall about when that
20 was.

21 A I don't honestly remember. It may have been
22 -- it was several months ago, I do remember that.

23 Q Was that done I assume at his request?

24 A Yes. It was.

25 Q Did you -- where did you carry him?

1 A Took him to, I believe it was a Pentecostal
2 church there in Daingerfield. It's located behind
3 Stott's Automotive on South Linda Drive there in
4 Daingerfield.

5 Q Did you carry anybody else besides Mr. Wardlow?

6 A Yes. But I honestly don't remember who that
7 was.

8 Q Was that person baptized that day also?

9 A Yes, sir.

10 Q Was it one person or was it Billy and one other
11 individual or was there --

12 A I believe that it was Billy and one other
13 individual.

14 Q Is that something -- did you personally do this
15 or have one of your deputies do this?

16 A No. I personally did this.

17 Q Is that something that you do from time to time
18 or maybe have one of your deputies or jailers do from
19 time to time?

20 A Yes. I do.

21 Q Did you consider that anything out of the
22 ordinary?

23 A None whatsoever.

24 MR. TOWNSEND: Pass the
25 witness.

1 THE COURT: Mr. Old?

2
3 CROSS EXAMINATION

4 BY MR. OLD

5
6 Q Sheriff, I notice a notebook in front of you
7 while you were testifying. I would presume that has your
8 notes as to this case in it?

9 A Yes, sir. It has.

10 Q And did you review those notes prior to coming
11 here today in whole or at least in part?

12 A In part. Yes, sir.

13 MR. OLD: Your Honor, we would
14 request permission to see the notes that he used to have
15 available to him for his testimony today.

16 THE COURT: Mr. Townsend?

17 MR. TOWNSEND: No objection,
18 Your Honor.

19 THE COURT: Sheriff, is there
20 anything in there that you object to the Defense seeing?

21 THE WITNESS: None whatsoever.

22 THE COURT: Tender the book
23 or the notes to -- that's a pretty thick notebook, have
24 you reviewed the entire notebook before testifying today?

25 THE WITNESS: At about 10:00

1 o'clock I received a subpoena requesting this
2 information.

3 The office personnel and myself put this
4 together as best as we could, provided Mr. Townsend with
5 information as best as we could on such short notice.

6 And like I say, I have looked, at some
7 point in time I have seen the majority of this but so far
8 as sitting down looking at it all, through it all
9 completely this morning I have not.

10 THE COURT: Does that notebook
11 refer only to the Wardlow case?

12 THE WITNESS: Yes, sir.

13 I was going to say it has various
14 visitation policies and things of that nature but those
15 are policies that pertain to everyone.

16 THE COURT: Tender the
17 notebook, please to Mr. Old for his review.

18
19 (Handed to Mr. Old.)

20
21 MR. HINSON: May we take a
22 short recess?

23 THE COURT: Looks like it may
24 be more than "a short recess."

25 MR. OLD: Your Honor, why

1 don't we take a short recess and I'm hopeful that I have
2 seen a lot of this material through delivery and it may
3 not take near as long as the thickness of the notebook
4 indicates.

5 THE COURT: Take a 10 minute
6 recess and in 10 minutes tell me if you need more time.

7
8 (Recess.)

9
10 THE COURT: All right.
11 Sheriff, if you will get back on the stand and we'll see
12 if we can proceed.

13 We need to be back on the record.

14 I don't remember who was questioning the
15 witness, I think that you just began.

16 MR. TOWNSEND: I had passed
17 the witness.

18 MR. OLD: Please state your
19 name.

20 THE WITNESS: Ricky Blackburn.

21 Q (BY MR. OLD, CONTINUING CROSS EXAMINATION) Are
22 you the Sheriff of Morris County, Texas?

23 A Yes, sir.

24 Q How old a man are you, Mr. Blackburn?

25 A 46.

1 Q Are you a native of Morris County?

2 A No, sir.

3 Q Where was your birth home?

4 A Spartanburg, South Carolina.

5 Q How long have you lived in Morris County?

6 A Since 1981.

7 Q How did you come to Morris County?

8 A I moved over from Bowie County.

9 Q You were in the Military?

10 A Yes, sir.

11 Q What branch of the Military were you in?

12 A The Marine Corp.

13 Q When was that?

14 A 1966 to 1969.

15 Q About how old were you then?

16 A I was 18 whenever I went in and had turned 21

17 just prior to my getting out.

18 Q That was during the Vietnam era, did you do a

19 tour?

20 A Yes, sir.

21 Q What was your rank on discharge?

22 A Sergeant E-5.

23 Q Were you in the Military police or any form of

24 law enforcement in the Armed Services?

25 A No, sir.

1 Q Were you a -- what was your specialty?

2 A Infantry.

3 Q You were a soldier?

4 A Yes, sir.

5 Q A true soldier?

6 A Pretty well so. Yes.

7 Q Will you start with your first employment in
8 law enforcement and tell me where it was?

9 A In DeKalb, Texas something like in April of
10 1970, 1972 until I believe September of 1977. Left --

11 Q Who was that with, Bowie County Sheriff, DeKalb
12 Police?

13 A The DeKalb Police from '72 to '77.

14 Q What did you do for the City of DeKalb?

15 A Just all phases of law enforcement, just
16 general law enforcement, patrol, investigations.

17 Q Did you receive a title or rank other than
18 "patrolman" if they in fact had a rank?

19 A Well, there was three of us there, the chief
20 and me as a Sergeant, a Patrolman.

21 Q You were not a sergeant?

22 A Yes. I was.

23 Q Where did you go from the City of DeKalb?

24 A To the Sheriff's Department in Bowie County.

25 Q What did you go there as?

1 A As a Traffic Enforcement Officer.

2 Q And that was as a deputy?

3 A Yes.

4 Q And your duties were primarily traffic?

5 A Yes, sir.

6 Q How long did you work for Bowie County?

7 A Through the end of 1980.

8 Q And the entire time there were you in traffic
9 or --

10 A The last maybe eight or nine months I was
11 supervisor or the deputies on the west end of the county.

12 Q Were you a -- was that over all deputies
13 assigned to the west end or just those -- your primary
14 duty was to work traffic?

15 A No. I believe there was three of them, they
16 were -- kind of the dividing line I believe was Hooks and
17 Redwater, Texarkana serviced from there back east and
18 there was I believe four deputies served Redwater and
19 Hooks and into Oklahoma and then our adjoining counties,
20 Red River County and Cass County.

21 Q In that last eight or nine months period you
22 became an administrator as opposed to a field officer?

23 A Well, I was doubling as both. I was working
24 investigations and making sure that the other
25 officers --

1 Q What were you doing in investigations?

2 A Working everything from narcotics to cows on
3 the roadway to burglaries and thefts to family
4 disturbances, DWIs.

5 Q Why did you leave the Bowie County Sheriff's
6 Department?

7 A There was a change in administration, there was
8 a change in sheriffs.

9 Q Were you terminated or did you resign?

10 A I quit.

11 Q Were you asked to resign because of the change
12 in administration?

13 A No. I was not asked to quit, I did
14 voluntarily.

15 Q Why did you leave DeKalb City Police force?

16 A To go with the Bowie County Sheriff's
17 Department.

18 Q You resigned that position?

19 A Yes, sir.

20 Q Where did you go from the Bowie County
21 Sheriff's Department in 1980 when you terminated your
22 employment with them?

23 A I was unemployed from the end of December of
24 1980 until March of 1981, at which time I went to work
25 for the Daingerfield Police Department.

1 Q City of Daingerfield?

2 A Yes.

3 Q What did you go to work as for them?

4 A Patrolman.

5 Q How long did you work for them as a patrolman?

6 A I think for two months.

7 Q Were you promoted or assigned to different

8 tasks with them?

9 A No.

10 Q Did you work for them just two months?

11 A Yes.

12 Q You terminated after two months?

13 A Yes.

14 Q What did you do?

15 That would have been about May, 1981?

16 A Close. Yes, sir.

17 Q Where did you go then?

18 A I went to the City of Hooks as their Police

19 Chief.

20 Q How long were you Chief of Police at the City

21 of Hooks?

22 A Until December of 1981.

23 Q And what brought that employment to an end?

24 A A near divorce.

25 Q Did you quit or were you fired?

1 A No. I resigned.

2 Q You resigned?

3 A Yes, sir.

4 Q And in December of '81 where did you next work?

5 A I returned to the Daingerfield Police

6 Department.

7 Q What as?

8 A Patrolman.

9 Q How long did you work for them in that time?

10 A Until July the 3rd of 1982.

11 Q In that stay with the City of Daingerfield were

12 you a patrolman?

13 A Yes, sir.

14 Q Were you ever promoted or reassigned to

15 anything else?

16 A I got promoted to Sergeant.

17 Q "Sergeant?"

18 A Yes, sir.

19 Q When you became a sergeant with them were you

20 in fact still a sergeant patrolman?

21 A Yes, sir.

22 Q Had some supervisory responsibility along with

23 patrolman?

24 A A little bit. Yes.

25 Q In July, 1982 where did you go to work?

1 A For the Morris County Sheriff's Department.

2 Q As deputy?

3 A Yes, sir.

4 Q Any particular type of deputy, any specialized
5 deputy job?

6 A No, sir.

7 Q Who was sheriff then?

8 A Mr. Joe Skipper.

9 Q How long did you work as a deputy for the
10 Morris County Sheriff's Department?

11 A At that time until October, 19 -- either
12 October or November of 1991.

13 Q So that was about nine years?

14 A Yes, sir.

15 Q Were you promoted or reassigned to different
16 tasks other than this of general duty?

17 A Yes. I was promoted to Chief Deputy.

18 Q In 1991 what was your next employment after the
19 -- did you resign as chief deputy or were you fired?

20 A No. I resigned as Chief Deputy to seek the
21 office of Sheriff of Morris County.

22 Q And you ran against your employer, did you not?

23 A Against Mr. Skipper. Yes, sir.

24 Q Did you work between October of '91 as a peace
25 officer and I presume you took office January 1st, 1993

1 or --

2 A No, sir. I was elected as Sheriff in April of
3 '92, there was a runoff between myself and Mr. Skipper
4 and -- yeah and then that was maybe on April the 8th or
5 the 10th and then I returned to employment as a Deputy
6 the latter part of April.

7 Q And did you -- you took office January 1st,
8 1993?

9 A Mr. Skipper resigned I believe in August of '92
10 and I was appointed to fill his unexpired term and in
11 January of '93 I was appointed or took over.

12 Q So you have been Sheriff since sometime in
13 August of '92?

14 A Yes, sir.

15 Q What is your educational background?

16 First let me ask you; where did you
17 graduate from high school?

18 A DeKalb High School.

19 Q DeKalb, Texas?

20 A Yes, sir.

21 Q You were born in North Carolina?

22 A "South Carolina."

23 Q When did you move to Texas?

24 A Not being vague or anything but I was adopted
25 in 1956 and I think that it would be somewhere in that

1 area, maybe '55 or '56.

2 MR. TOWNSEND: Your Honor, I
3 would like to object to this line of questioning, I think
4 we are -- it's just not relevant to issues at hand.

5 THE COURT: Mr. Old, what is
6 the purpose of this line of questioning?

7 MR. OLD: Your Honor, it is
8 relevant to know his background and experience in law
9 enforcement and the motion is a Motion to Suppress a
10 Confession(s) in light of being a voluntary confession
11 and his work experience and such are material and
12 relevant to that issue.

13 THE COURT: Overruled.

14 MR. OLD: You graduated from
15 high school in DeKalb what year?

16 THE WITNESS: 19 -- what, May
17 28th of 1966.

18 Q (BY MR. OLD) You went to the Marine Corp I
19 presume shortly after?

20 A Yes, sir. June 15th, 1966.

21 Q Do you have any college?

22 A Yes, sir. I have my Associate's Degree in
23 Police Science.

24 Q Where from?

25 A From Texarkana Community College.

1 Q When did you obtain that degree?

2 A It took me about seven years to get it but I
3 believe that it was in 1980.

4 Q I presume taking seven years you went part-time
5 as you were working?

6 A Yes, sir. Some semesters I may not get to go
7 but three hours.

8 Q Do you have any other college degrees or
9 certificates from schools relating to law enforcement?

10 A I have no further degrees from college. I have
11 from the Commission on Law Enforcement standards, I have
12 my advanced degree and waiting to get my Master's Degree
13 in Law Enforcement from the Commission on Law
14 Enforcement.

15 Q You received a subpoena to bring -- to come to
16 this hearing and to bring certain written materials with
17 you, did you not?

18 A Yes, sir.

19 Q You were requested to bring all letters of
20 correspondence between you your employees and Billy Joe
21 Wardlow?

22 The State has -- and that also includes
23 all documents, recordings showing the date sent and
24 received.

25 The State has introduced Exhibits 1

1 through 46, are those those documents? (Indicating)

2 A Yes, sir.

3 Q Are there anymore documents or correspondence
4 or written matters passed between you and your department
5 and Mr. Wardlow, whether he sent them or you or your
6 department sent them?

7 A None to my knowledge.

8 THE REPORTER: I think it's
9 "1 through 42", Mr. Old.

10 MR. OLD: "1 through 42?"

11 You were asked to bring all jail records
12 showing which cell Billy Joe Wardlow was kept in on each
13 date since his arrest?

14 THE WITNESS: Yes, sir.

15 Q (BY MR. OLD) Are those in the notebook that
16 is being copied?

17 A Yes, sir. They are.

18 Q And all jail records as to security and
19 discipline pertaining to Billy Joe Wardlow?

20 A Yes, sir. It's in the notebook.

21 Q They are in the notebook?

22 A Yes, sir.

23 Q I believe it was your testimony that you placed
24 Mr. Wardlow under arrest on behalf of the State of Texas
25 in Madison, South Dakota?

1 A Yes, sir.

2 Q And you testified that you read him his rights
3 at that time?

4 A Yes, sir.

5 Q "Rights" being what you referred to as "Miranda
6 Warnings?"

7 A Yes, sir.

8 Q Did you do that from memory?

9 A I have a card.

10 Q Did you use the card or did you advise him from
11 memory?

12 A I have a card but I read.

13 Q My question is; did you read him that card?

14 A I read him the Miranda Warnings on the card.

15 Q And there in Madison, South Dakota he invoked
16 and told you that he wanted a lawyer?

17 A Yes, sir.

18 Q You testified on -- in answer to questions from
19 the District Attorney, Mr. Townsend asked you about a
20 conversation or perhaps a series of conversations that
21 you had with Billy Wardlow concerning how to relieve his
22 depression and I'm not sure whether you said the word
23 "depression" or not, you said that he complained of
24 having -- had problems sleeping and having nightmares and
25 being unhappy?

1 A He was having problems dealing with the
2 situation. He was having nightmares and having problem
3 sleeping.

4 Q And discussed with him how to deal with that?

5 A The way that I dealt with it.

6 Q When -- was this one conversation or several
7 conversations?

8 A That was one conversation that --

9 Q Was that conversation prior to 28 February of
10 1993?

11 A Yes, sir.

12 Q Was it after January the 1st, 19 -- excuse
13 me --

14 A Excuse me.

15 Q I said -- was that conversation before February
16 28th, 1994?

17 A Yes, sir.

18 Q And was it -- was it after February the 1st,
19 1994?

20 A I honestly don't remember. I believe the
21 letter -- the letter was dated 1/24/94 where Billy had
22 asked to speak to me and I don't have the exact date of
23 when I did talk to Billy.

24 Q Let me -- are you making reference to Exhibit
25 1?

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I will show you a copy of Exhibit 1.

(Handed to the witness.)

THE WITNESS: Yes, sir.

MR. OLD: Okay. That is dated
you said "1/24", it's dated "1/25/94." (Indicating)

THE WITNESS: Okay.

Q (BY MR. OLD) How long after 1/25/1994 did this
conversation take place?

A I honestly don't remember. It may have been
a week to ten days. It may have been that evening. I
honestly don't remember.

Whenever I had time and whenever time
allowed for it is whenever I speak to various inmates.

Q But you think it was at least a week or ten
days after the date of the letter?

A That would just be a total estimation. I could
not --

Q You don't know?

A No, sir.

Q It could have been a week before the letter?

A Yes, sir.

Q Okay.

A Yeah.

1 Q Was the meeting that was brought -- was the
2 meeting the result of Billy's request 1/25/94 as
3 reflected by Exhibit 1, was it the first time that you
4 had met with him up in the dispatcher's office as you
5 testified to?

6 A There in the chief dispatcher -- the chief
7 dispatcher's office.

8 Q Was that the first time that you had had such
9 a meeting with him?

10 A I honestly don't remember.

11 Q You don't recall having other meetings with him
12 prior to that?

13 A No, sir. I sure don't.

14 Q You are not telling me you did not?

15 A I'm not telling you that I did not and I'm not
16 telling you that I did. I just simply don't know.

17 Q Did you ever bring Billy up -- you have a no
18 smoking facility, do you not?

19 A Yes, sir.

20 Q Did Billy smoke at that time?

21 A This was in February?

22 Q Yeah. February of this year, '94.

23 A I was trying to remember whenever our jail
24 inspection was.

25 I don't know if Billy smoked then or

1 not. He could have.

2 Q Okay. Did you ever bring him up to the office
3 where he could smoke a cigarette?

4 A Not for the sole purpose of that. No.

5 Q Did you ever allow him to smoke while he was
6 up there?

7 A If he smoked anything it would have been just
8 a cigarette.

9 Q That's what I meant, just a cigarette, did you
10 bring him up?

11 I'm not saying you brought him up there
12 only to smoke a cigarette but when a prisoner is up there
13 counseling with you is it your practice to allow them to
14 smoke a cigarette?

15 A If they want to smoke a cigarette I normally
16 allow them to smoke one.

17 Q Do you smoke, Sheriff?

18 A Yes, sir.

19 Q I do, Sheriff, and you kind of have sympathy
20 for those people that do and put into a no smoking
21 facility.

22 A Sure.

23 Q What?

24 A Sure.

25 Q You knew Billy Wardlow prior to the date of his

1 arrest for the offense which he is charged?

2 A Yes, sir.

3 Q You knew him well?

4 A Knew him pretty good. Yes, sir.

5 Q Had you through your work in the -- over the
6 years in Morris County had you had contact and worked in
7 conjunction side by side with the Cason Fire Department?

8 A Yes, sir.

9 Q Do you recall Billy Wardlow being a member of
10 that organization at any time?

11 A Yes, sir.

12 Q Isn't it a fact that his mother and father are
13 the head of the organization or at least the de facto
14 heads of it?

15 A Yes, sir.

16 Q That is to say for the last twenty years they
17 had been the people who kept it going and were most
18 interested in it?

19 A Ever since I have been they are normally on a
20 fire call in the Cason area, Mr. and Mrs. Wardlow are
21 always there. Yes, sir.

22 Q And Billy Wardlow was riding those fire trucks
23 with them when he was nine or ten years old, wasn't he?

24 A I don't remember how old Billy was.

25 Q A kid?

1 A He was a kid. Yes, sir.

2 Q I mean "a kid" as opposed to being in high
3 school or something like that?

4 A Yeah.

5 Q Is that when you first met him or came to know
6 who he was?

7 A Actually I think I first came to know Billy
8 and his brother, you know, they had vandalized a church
9 there in Cason.

10 Q What year was that?

11 A I don't know. They were just little bitty
12 kids.

13 Q Well, how old were they?

14 A Ten, 11, 12, something like that.

15 Q Did you ever work in conjunction with the Cason
16 Fire Department in such things as trying to find a
17 drowning victim or missing person?

18 A Not right off the top of my head I can't
19 remember a drowning victim.

20 Q A wreck?

21 A Yes. "Wreck" would be more in line, wrecks and
22 fires. Yes.

23 Q Will you characterize your relationship with
24 his mother and father and him?

25 A I would say that we were acquaintances.

1 Q Acquaintances? First name acquaintances?

2 A Yes, sir.

3 Q Did you all go to church together?

4 A No, sir.

5 Q Exhibit 1 is addressed to "Patsy" and at the
6 bottom it says, "cc to Sheriff Blackburn", I presume that
7 you received a copy of it?

8 A Yes, sir.

9 Q He requested that he speak to you on a matter
10 of utmost importance?

11 A Yes, sir.

12 Q It says that "When you are at the point of
13 availability and ready to speak to me I will give you the
14 request."

15 What had been requested of him?

16 A That was his request to speak to me, that's the
17 way I took it.

18 Q And he wanted a private consultation with you
19 -- excuse me, I'm sorry.

20 A I don't see that. Let me look at these.
21 (Indicating)

22 Q There "1" is, that's the one.

23

24 (Handed to the witness.)

25

1 THE COURT: Let me see "1" before he
2 starts in.

3
4 (Handed to the Court.)

5
6 THE WITNESS: Okay.

7 MR. OLD: It states that he
8 would like to have a private consultation with Sheriff
9 Blackburn "concerning my case" -- referring, of course,
10 to the case we are here on today?

11 THE WITNESS: Yes, sir.

12 Q (BY MR. OLD) And would do, "whatever is
13 necessary to receive this hearing?"

14 And that is referring to a hearing
15 before you, is it not?

16 MR. TOWNSEND: I'm going to
17 object, Your Honor, I think he's asking the Sheriff to
18 assume what the letter means.

19 THE COURT: Sustained.

20 MR. OLD: What did you take
21 the letter to mean?

22 THE WITNESS: I took it that
23 Billy wanted to talk to me.

24 Q (BY MR. OLD) About his case?

25 A Right. Yes, sir.

1 Q At that time had he been indicted?

2 A Yes, sir.

3 Q And he had a -- he had a lawyer appointed?

4 A Yes, sir.

5 Q Did you contact his lawyer informing him that
6 Mr. Wardlow has requested he talk to you concerning the
7 case?

8 A Contacted Mr. Townsend and --

9 MR. OLD: Object, Your Honor,
10 it's non-responsive.

11 THE COURT: Non-responsive?
12 Sustained.

13 MR. OLD: Did you contact Mr.
14 Vernard Solomon?

15 THE WITNESS: No, sir.

16 Q (BY MR. OLD) At that time he had been
17 indicted?

18 A Yes, sir.

19 Q Had you received any notice from Mr. Solomon
20 that he did not want his client discussing this case with
21 anyone without him being present?

22 A Yes, sir. I believe so.

23 Q And how did you receive that?

24 A Through a letter, I think.

25 Q And you did not contact Mr. Solomon?

1 A No, sir. I told Billy to contact him.

2 Q Okay. And when did you tell Billy to contact
3 him? Prior to this meeting?

4 A It was at the time of the meeting.

5 Q Once you got to the meeting you told him to
6 contact him?

7 A Yes.

8 Q But before you brought him in to talk to him
9 about his case or talk to him about the request
10 concerning his request to talk to you about his case you
11 did not notify his attorney?

12 A I did not. No, sir.

13 Q And Billy had stated he would do whatever
14 necessary to receive or have this meeting with you?

15 A Yes, sir.

16 Q Did you and Billy Wardlow in that meeting talk
17 about the Bible?

18 A I don't know if we talked about the Bible
19 during that one or not.

20 Q Did you tell him in that meeting that since you
21 had been in the Military you always carried a pocket
22 Bible, when you were troubled that you reached in your
23 pocket, opened that Bible and wherever it opened up you
24 read and you thought that was how you received direction
25 concerning your problems from God?

1 A Yes.

2 Q You told him that?

3 A Yes, sir.

4 Q Did you talk about the scripture that -- I
5 apologize, I don't recall where it comes from but it is
6 known as "You shall know the truth and the truth shall
7 set you free?"

8 A I don't know if we talked about that one
9 specifically or not.

10 What I was referring to, I do carry my
11 Bible with me wherever I go, it has been through Vietnam
12 and I'm a firm believer in the Bible and as I mentioned,
13 if something is bothering me, if I'm having problems many
14 times I can open the Bible just blindly, not even knowing
15 where it is and normally there is something there that
16 will deal with the problem that I have.

17 I find a great deal of comfort in the
18 Bible, a great deal of instruction, you know.
19 (Indicating)

20 Q Do you recall specifically whether or not you
21 all discussed typically the truth freeing men?

22 A Specifically, no. But I feel as though we
23 probably did.

24 Q Did you discuss the repentance of sin?

25 A Again, I'm sure that we were -- that if we were

1 discussing the Bible and we probably went through it,
2 went through everything.

3 Billy remembers it as being that then
4 as far as knowing which scripture it is in, as far as
5 talking about the truth and the truth setting you free,
6 I'm sure that we did talk along those lines there.

7 Q And that would be no different than if you told
8 a man that we were "forgiven for our sins through our
9 belief in Christ and upon asking through Christ and our
10 Lord, the Lord would forgive us?"

11 A Yes, sir.

12 Q That is saying the same thing as "The truth
13 shall set you free?"

14 A Pretty well. Yes.

15 Q You agree?

16 A I agree with that.

17 Q Did you talk to him about such things as the
18 "repentance of sin?"

19 A When Billy was baptized I talked to him about
20 that.

21 Q Let's talk about this meeting --

22 A As far as "the repentance of sin", as long as
23 you get yourself right with God that's the main person
24 and like I told him, and I tell many people that I talk
25 to, "You can tell me one thing and you can lie to me but

1 you are not going to lie to God" and that's the way that
2 it is.

3 Q I think that's something that you and I can
4 agree on.

5 Generally what would you -- are you a
6 member of a particular church?

7 A I am a member of the Church of Christ. Yes,
8 sir.

9 Q Are you a strong member of the Church of Christ
10 as opposed to your belief in Christ?

11 A I am --

12 Q My question, some people believe in the church
13 and some people believe in God and Christ.

14 A I believe in God and Christ, I go to the Church
15 of Christ to worship with other people and show my belief
16 in God.

17 Q In this meeting that we are talking about that
18 resulted from Billy's request that is set forth in
19 Exhibit 1, did you explain to him that we were all saved
20 by our belief in Christ and God?

21 A Yes, sir.

22 Q And that by our belief and the asking for
23 forgiveness for the repentance of sin that we would be
24 saved?

25 A Yes, sir.

1 Q How long was this meeting -- how long was the
2 meeting?

3 A Forty-five minutes, 30 minutes, an hour.

4 Honestly I honestly can't tell you.

5 Q All right.

6 A It was not a meeting of great length but it
7 wasn't a short meeting, either. I would estimate 45
8 minutes.

9 Q If we put it in the range of 45 minutes to an
10 hour and 15 minutes would that be fair?

11 A I believe so. Probably.

12 Q When you are having a meaningful conversation
13 time really slips by?

14 A Time has no meaning.

15 Q And in this conversation you told Billy that
16 it had been your experience when you sat down and wrote
17 things out from one point to another and after you wrote
18 them out you sat back and read them, went back and added
19 to them and studied there was benefit?

20 A It helps me personally to be able to do that.

21 Q And you believe it helps you and you believed
22 it would help him?

23 A There may have been that thought, I believe it
24 would help anyone. Yes, sir.

25 Q Are you suggesting to him that perhaps he ought

1 to try that which gave you comfort?

2 A Yes, sir. I felt as though that Billy once he
3 had admitted to the truth and was able to sit there and
4 look at it it would help him to deal with his problems.

5 Q We don't have your jail records in front of us.
6 Do you recall at that time whether or not Billy requested
7 to be put into a cell by himself?

8 A That was in February -- that was -- in February
9 of '94?

10 Q At this meeting that you and he had that we are
11 talking about.

12 A I honestly don't remember. I think Billy was
13 mostly in cell number 160, a multiple occupancy cell and
14 -- no. I don't.

15 Q If you had your records in here could you
16 answer that question?

17 A Yes, sir.

18 I believe in going through the
19 information earlier that was in cell number 160 but I
20 just had --

21 Q At which time?

22 A I would just have to look at the records. In
23 February during -- it would be I guess from January 25th
24 until the time I received the letter on the 28th.

25 Q We'll come back to that record and look at it

1 later on.

2 Okay. After this meeting when was the
3 next time that you met with him?

4 A I believe that Billy had filed a lawsuit on
5 second hand smoke -- that was '93 -- it was on -- it was
6 a meeting with Mr. Bob Patterson on -- who is our jail
7 inspector and Billy filed a grievance with the Jail
8 Commission on second hand smoke and Mr. Patterson had
9 talked to Billy about it but I don't remember if it was
10 in April of this year --

11 Q What did you and Billy talk about at that
12 meeting?

13 A Billy and I didn't talk to anybody about
14 anything at that meeting, Billy talked to Mr. Patterson.

15 Q When did you next talk to Billy that occurred
16 as the result of the January 25th letter, 1994?

17 A I don't honestly remember.

18 Q How many times have you met with him since
19 then?

20 A I don't know. Sometimes Billy, say whenever
21 he was in the single cell I would just drop by for two
22 or three minutes, "How is it going, what's going on, how
23 are you making it", things of that nature.

24 Q Other than saying, "Hello, how are you,
25 goodbye", would you all talk about perhaps the Bible or

1 other events?

2 A Last -- the last time that I can remember he
3 had short-circuited our surveillance camera.

4 Q When was that?

5 A This is what? A month and a half ago, a month
6 ago?

7 Q What was the conversation between you and he
8 at that time?

9 A About him, like I say, where Billy was -- Billy
10 had taken the --

11 Q What was the conversation between you and he?
12 What did you say to him?

13 A Just asked him, "how it was going, how he was
14 making it."

15 Q Talk about the Bible?

16 A Not at that time. No.

17 Q Have you talked about the Bible with Billy at
18 other times other than the meeting that occurred as the
19 result of Exhibit 1?

20 A I don't honestly remember.

21 Q Did you keep records of when you have these
22 meetings with your prisoners?

23 A No, sir. I don't.

24 Q Is it set forth in your jail policy that
25 employees of the Sheriff's Department shall make notes

1 on such things?

2 A No, sir. Not that I'm aware of.

3 You have to remember, you know, we have
4 anywhere from 45 to 50 people, sometimes you may just
5 visit with one of them for two or three or four minutes.

6 Q Okay.

7 A Like one day last week one of them kept sending
8 requests up to talk to me, he was wanting to be sent out
9 as a trustee.

10 The majority of the time they want to
11 go out and work either as a trustee, they need to sign
12 some kind of financial papers or whatever.

13 Q In January of 1994 Mr. Wardlow requested the
14 use of law books to examine information concerning
15 certain legal matters, did you have a conversation with
16 him about that?

17 A Not that I remember. That would have -- the
18 jailer or Mrs. Martin, Chief Dispatcher, would have
19 handled something of that nature.

20 MR. OLD: Your Honor, may I
21 approach the witness?

22 THE COURT: You may.

23 MR. OLD: Where is the other
24 stack?

25

1 (Handed to Mr. Old.)

2
3 MR. OLD: I'm going to show
4 you State's Exhibit 8 and ask you if -- I believe you
5 just told me that you did not recall having a
6 conversation concerning that with Mr. Wardlow?

7 THE WITNESS: No. I do not.

8 Q (BY MR. OLD) You are not telling me you
9 didn't, you are just telling me you don't recall it?

10 A I don't recall it.

11 Q And you have not found a record of you having
12 done so?

13 A No.

14 Q Let me show you State's Exhibit 9.

15
16 (Handed to the witness.)

17
18 THE WITNESS: Okay.

19 MR. OLD: Okay.

20 THE WITNESS: That --

21 Q (BY MR. OLD) Let me -- at the bottom of that
22 Patsy apparently made a note that you were going to get
23 Billy out and talk to him, did you do that?

24 A I told Billy his request had been forwarded on
25 to the District Attorney and to his attorney.

1 Q What request?

2 A To be examined for psychological.

3 Q Did you have a conversation with him at that
4 time about his depression, his stress?

5 Did you talk to him about maybe reading
6 the Bible to help him?

7 A I don't recall.

8 Q Are you going to tell me you did not or you
9 don't recall?

10 A I don't recall.

11 Q But if you had a conversation and that came up
12 it would be consistent with what you usually do that you
13 did talk to him about spiritual matters?

14 A Rephrase that question for me again.

15 Q Okay. When you talk to prisoners, not only Mr.
16 Wardlow but other prisoners, Exhibit 9, Billy states that
17 "I am under so much stress and my nerves on the verge of
18 breaking down" then he requested to be examined.

19 When a prisoner came to you with that
20 problem you would -- it would be consistent with your
21 practices to give them spiritual advice?

22 A Not all the time. On something like that I
23 would probably tell him, you know, "You were to notify
24 the District Attorney and your attorney and it would be
25 up to them to have an exam made."

1 Q After you talked to Billy concerning the
2 1/25/94 request you found out at that time he was having
3 trouble sleeping, he was having nightmares and you told
4 him at that time to read the Bible?

5 A On 1/25?

6 Q Yes. After the 1/25, the meeting brought about
7 by State's Exhibit 1.

8 Now, his letter says, State's Exhibit
9 expresses the same problem, perhaps a different word,
10 "stress, nerves, on the verge of a breakdown", you didn't
11 counsel him then, did you?

12 A To me he was indicating he was in need of
13 medical attention.

14 Q Wasn't he indicating to you the same thing back
15 after January 25th, 1994 when he told you that he was
16 having problems sleeping, he was having nightmares, he
17 was depressed?

18 A On that one that he's requesting to have an
19 examination.

20 Did he not request an examination in one
21 of those?

22 Q Yes. He did but I mean --

23 A Okay.

24 Q -- but I mean you weren't concerned at this
25 point about the same problem that he had expressed to you

1 back in your first meeting?

2 A No. No. I was concerned. He had requested
3 that an examination be conducted.

4 Q Well, why didn't you give him the same advice
5 at that time "I will send your request on but why don't
6 you write everything down and review it and look at it
7 and perhaps it will help you?"

8 A Because he had requested an examination we was
9 forwarding it on to a professional examiner that could
10 come in and look at him.

11 Q Who has authority over your jail?

12 A I do.

13 Q And when a medical prisoner has a medical
14 problem it is your duty to get for him, it is not the
15 District Attorney's, is it?

16 A No.

17 Q I mean you have the authority to take them to
18 any doctor you want to take them to?

19 A Correct.

20 Q But you sought Mr. Townsend on this?

21 A On the medical examination?

22 Q Yes.

23 A So many times an attorney will request to have
24 their -- just like the female inmate there and requested
25 the same thing, I contacted her attorney and they came

1 and had the examination.

2 Q But I mean he wasn't asking for an examination
3 to go to court, he was telling you that he was mentally
4 sick, he was stressed out, nervous, he was about ready
5 to have a nervous breakdown. He was asking you for
6 medical help, wasn't he?

7 A No.

8 Q "No?"

9 He wanted an examination?

10 A Well, a psychiatrist -- well, I guess -- let's
11 go back to the definition of "medical help", he was
12 wanting a psychiatrist to come in and examine him.

13 Q Where does it say that he wanted a
14 psychiatrist?

15
16 (Handed to the witness.)

17
18 MR. OLD: Refer back to
19 Exhibit 9. (Indicating)

20 THE WITNESS: Well, "I request
21 to be examined for stress or depression related
22 problems." (Indicating)

23 Q (BY MR. OLD) Don't medical doctors treat
24 people for depression?

25 A So do psychiatrists and psychologists.

1 Q Why didn't you follow your jail guidelines and
2 take him to a doctor and see if he had a problem?

3 A He didn't request to see a doctor.

4 MR. TOWNSEND: I object to
5 this. This witness has already testified why he did what
6 he did, what his interpretation of that letter was.

7 THE COURT: Sustained.

8 MR. OLD: You had a
9 conversation with Mr. Townsend concerning whether or not
10 to get him medical help?

11 THE WITNESS: No.

12 Q (BY MR. OLD) You did not?

13 A No. I did not.

14 Q Did you have any conversation with Mr. Townsend
15 as to Mr. Wardlow's request for an examination?

16 A Yes.

17 And also told him -- asked if he was
18 going to contact Mr. Solomon and let him know about it.

19 I may can go back and check and see when
20 Miss Fulfer's exam was to see if that's going to be in
21 the same time frame or same area.

22 Q But I mean, Miss Fulfer doesn't have anything
23 to do with Mr. Wardlow's health problem?

24 A It's a guide to me to see if it was along about
25 the same period of time that if Tonya was getting -- or

1 Miss Fulfer was getting examined by a psychologist and
2 Billy may have felt that he needed to be examined by a
3 psychologist or a psychiatrist also.

4 Q September 15th -- excuse me, on 5/18/94, per
5 State's Exhibit 15 you had a communication from Mr.
6 Wardlow.

7
8 (Handed to the witness.)

9
10 MR. OLD: Did you have a
11 conversation with him about his request which I believe
12 was to be moved to a different cell?

13 THE WITNESS: No. On this I
14 talked to the Chief Jailer.

15 Q (BY MR. OLD) Okay. It says that -- is that
16 a copy of your handwriting at the bottom of the page?
17 (Indicating)

18 A No. That's Patsy -- Chief Jailer Martin's
19 handwriting.

20 Q Says "Leave where he's at", was that your
21 direction?

22 A Yes, sir.

23 Q June 11th, 1994, another request to change
24 cells.

1 (Handed to the witness.)

2
3 MR. OLD: Did you have a
4 conversation with Mr. Wardlow concerning that?

5 THE WITNESS: That's Patsy.
6 No. No.

7 Q (BY MR. OLD) Did you have a conversation with
8 Patsy?

9 A I don't even know if I had a conversation with
10 her or not.

11 Q Your answer is you don't know?

12 A I don't know. We get those quite often. It
13 would be various inmates.

14 Q State's Exhibit 17 is another request to be
15 moved and it is not dated.

16
17 (Handed to the witness.)

18
19 THE WITNESS: I don't know.

20 MR. OLD: Let me -- I notice
21 some of these communications are dated as to when they
22 are received and some are not, why is that?

23 THE WITNESS: Personnel error.

24 Q (BY MR. OLD) Is that a rule that you are to
25 date something when you receive it?

1 A If it comes through the -- through the mail of
2 course we have a jail log sheet and we log all that down,
3 the date it's received and if mailed or something of that
4 nature, sometimes the dispatchers do and sometimes they
5 don't.

6 Q Let me ask you a question; when you say
7 "through the mail" I may be getting -- I may be wrong,
8 you may correct me; there's two kinds of mail, there's
9 United States Postal mail that comes in and out of the
10 jail and then apparently you all operate your in-house
11 mail service?

12 A Through -- if it comes through -- if it comes
13 through the U.S. Mail it's logged down on our mail log.

14 Q Okay. And if it comes through your inner
15 facility mail it's not logged?

16 A No, sir.

17 Q And it's not dated "received?"

18 A Not all the time. No.

19 Q Is it supposed to be per your rule?

20 A No.

21 Q Why is that?

22 A If it's going through U.S. Mail, like I say,
23 we keep a record of it.

24 You have to understand that we get, run
25 anywhere from 45 to 50 inmates, you may get 15 or 20 of

1 them a day.

2 The jailers, they try to, may run back
3 and while they are passing out trays with an inmate may
4 poke a note to them.

5 Q I presume that someone in your office or
6 yourself reviews each and every one of those
7 communications?

8 A The majority of them go to Patsy Martin.

9 Q But sometimes Patsy dates them, sometimes she
10 doesn't?

11 A Yes, sir.

12 Q What is your practice when you receive them?

13 A Just take them and look at them.

14 Q You date them?

15 A No, sir.

16 Q Do you consider that to be important, the date
17 that you receive something?

18 A Well, on the important stuff it is dated on
19 what I consider to be important.

20 Q You write the date down?

21 A Patsy writes the date down. Like I say, if
22 it's important it will be documented.

23 Q State's Exhibit 3 which is addressed to you,
24 who was the first person in your department to read that
25 letter?

1 A Let's see, this was this one. I was.

2 Then I carried it over to Mr. Townsend.

3 Q Okay. I mean did you consider that letter to
4 be as important a matter as you had ever received through
5 jail communications?

6 A Well, it was important. Yes, sir.

7 Q You were surprised to get it?

8 A Yes, sir.

9 Q And you did not make a note on what date you
10 received it, did you?

11 A I made a note on the date it was written.

12 Q You dated that up at the top, "2/28" or "3",
13 whatever it is?

14 A It's "2/28/94."

15 No. It's Billy.

16 Q It's Billy's? (Indicating)

17 A Yes, sir.

18 Q But you did not consider it important enough
19 to date yourself, did you?

20 A Oh, yeah. It's extremely important and I'm not
21 saying that while I didn't put it down there I put it
22 somewhere else as far as notifying the District Attorney.

23 Q As to the death of Mr. Cole; at what point in
24 time did you consider that as to who had killed him, that
25 the crime had been solved?

1 MR. TOWNSEND: Your Honor, I'm
2 going to object. I don't see the relevance for purposes
3 of this hearing.

4 THE COURT: What is the
5 relevance?

6 MR. OLD: It's relevant to
7 show his interest sometime prior to February 28th, 1994
8 when he induced this man to make a confession by when he
9 told him to write everything down.

10 THE COURT: Overruled.
11 Restate the question.

12 MR. OLD: At what point in
13 time by date if you can did you consider that you or law
14 enforcement had solved as to who had killed Mr. Cole?

15 THE WITNESS: Do you have that
16 report with you?

17 MR. TOWNSEND: No.

18 THE WITNESS: A copy of the
19 Offense Report?

20 MR. TOWNSEND: No.

21 THE WITNESS: The date of the
22 offense is what is what, June 13th?

23 THE COURT: I believe it was
24 "June 14th."

25 THE WITNESS: "June 14th?"

1 MR. TOWNSEND: "June 14th."

2 June 14th is the date of the offense.

3 THE WITNESS: Okay. You asked
4 me a question that is not going to be a one word answer.

5 At the time that we discovered the .45
6 bullet or the medical examiner discovered it in Mr.
7 Cole's head, the time that we learned that Billy had
8 taken his mother's .45 Llama, .45 calibre weapon and had
9 made a box that the weapon had come in and the box of
10 shells which was empty and the bullet found in Mr. Cole's
11 head was of the same type and brand that would have been
12 fired by a Llama .45.

13 MR. OLD: What date was that?

14 THE WITNESS: Excuse me?

15 Q (BY MR. OLD) What date was that?

16 A I don't have the report, that's why I'm trying
17 to tell you, I'm trying to recall this, it was between
18 June the 14th and June the 17th.

19 Q So in your mind you had resolved that Billy Joe
20 Wardlow had committed this crime in June or July of 1993?

21 A In my mind I had resolved that we had
22 sufficient evidence to take Mr. Wardlow to Court on this
23 crime.

24 Q And when did you resolve that you had
25 sufficient evidence to convict him?

1 A I haven't.

2 Q When you received that letter February 28th,
3 1994 did you consider that -- that letter as evidence
4 which could be used to convict him?

5 A It's possible evidence. Yes.

6 Q You are pleased to get it from a law
7 enforcement standpoint of accumulating evidence?

8 A Let's back up and reword the question, please.

9 You are acting as though this was some
10 kind of far out scheme where I had ambushed Mr. Wardlow.

11 MR. OLD: I object to the
12 answer. He's not being responsive to it, he's arguing
13 with the question.

14 THE COURT: Overruled.

15 You may complete your answer.

16 THE WITNESS: That was not the
17 case.

18 If Mr. Wardlow had not requested to
19 speak to me I would not have spoke to him.

20 MR. OLD: But he requested to
21 talk to you about his case and you talked to him?

22 THE WITNESS: No. He started
23 talking to me about the case and I told him that I could
24 not talk to him about the case unless his attorney was
25 present.

1 Q (BY MR. OLD) And then you went into this
2 business of talking about his spiritual well-being and
3 you told him to write it all down?

4 A That is correct.

5 Q And you did not notify his attorney and give
6 him an opportunity to be present at that meeting?

7 A No. I did not.

8 I advised Billy to contact his attorney.

9 I not only talked to Mr. Townsend, I
10 also talked to the District Judge.

11 Q To who?

12 A The District Judge.

13 Q Which District Judge?

14 A A Mr. Porter, Judge Porter.

15 Q About what?

16 A Billy requesting to speak to me.

17 Q What did he advise you?

18 A He said it could go either way.

19 Q What do you mean "go either way?"

20 A Could go for us or go against us.

21 Q As to what regard?

22 A As to whether if anything came out of it about
23 what Billy said, about anything could go either way.

24 Q And you talked to Judge Porter prior to meeting
25 with Billy?

1 A Yes, sir.

2 THE COURT: Excuse me just a
3 minute, Mr. Old.

4 Sheriff, you said that you told the
5 District Attorney, I assume you mean "Mr. Townsend?"

6 THE WITNESS: "Mr. Townsend."

7 THE COURT: And you talked to
8 Judge Porter, you told me that you talked to Judge Porter
9 before this conversation, before this conversation with
10 Mr. Wardlow, talked to Mr. Townsend prior to talking to
11 Mr. Wardlow?

12 THE WITNESS: Yes, sir. I
13 talked to both of them trying to seek some guidance on
14 that.

15 THE COURT: Before you had
16 that conversation with Mr. Wardlow that is related in the
17 letter?

18 THE WITNESS: Mr. Townsend
19 said as long as you didn't go -- get into the case.

20 THE COURT: I just wanted to
21 get my time down, I will let him ask you what they wanted
22 to know about it.

23 MR. OLD: Judge Porter advised
24 that talking to him could go either for or against you?

25 By "you" I assume that he was referring

1 to the State?

2 THE WITNESS: Yeah. Right.

3 Q (BY MR. OLD) And he was referring to what
4 would be the fruits of that conversation, if any?

5 A Referring to any problem that might arise by
6 me talking to him.

7 Q But he advised you to go ahead and talk to him?

8 A No. He didn't.

9 Q He just said it could go for you or against
10 you?

11 A He did not tell me not to and he did not tell
12 me to talk to him.

13

14 (Off the record discussion.)

15

16 THE COURT: Let's go back on
17 the record.

18 MR. OLD: When you met -- and
19 the meeting I'm referring to, the meeting that is --
20 Exhibit 1 gave rise to after January 25th, 1994 when you
21 met with Mr. Wardlow did you read him the Miranda
22 Warnings from the card that you carry in your pocket?

23 THE WITNESS: No, sir. I
24 don't think so.

25 Q (BY MR. OLD) Did you advise him -- did you

1 immediately advise him that he had the right to be
2 present -- have an attorney to be present?

3 A He had requested to see me, I hadn't requested
4 to see him.

5 Q But you went to see Judge Porter about the
6 effect of finding out -- the effect of talking to him and
7 he said it could be good for the State or bad for the
8 State so far as gathering evidence?

9 A No. It could have been good for me -- he said
10 that it could go either way.

11 The meeting was not to gather evidence,
12 the meeting was simply to talk to someone that had
13 requested to talk to me.

14 Q If that was all it was why did you talk to the
15 Judge or District Attorney?

16 A Because I didn't want to mess up the case.

17 Q But you did not read him his Miranda Warning
18 at that time?

19 A No. I didn't.

20 Q You simply suggested that he write it all down
21 and read it?

22 A No. I didn't.

23 Q You made that suggestion to him?

24 A I told him that helped me.

25 Q Okay. I believe you testified earlier that you

1 never, you or your office never searched the cells of
2 Billy Joe Wardlow?

3 A No. I didn't say that.

4 Q You didn't? I thought you said --

5 A I don't remember us talking about it.

6 Q Did you search his cell or have it searched?

7 A Yeah. Yes.

8 Q When?

9 A Several times.

10 Q Prior to February 28th, 1994?

11 A We have fire drills and all, the whole place
12 is searched if we --

13 Q What are you looking for on a fire drill?

14 A What?

15 Q What are you looking for on a fire drill when
16 you search?

17 A Any kind of contraband.

18 A lot of the people will squirrel away
19 extra pillows, might want to keep an extra mattress, some
20 of them will try to make -- they get paper clips, try to
21 make something out of that, razor blades, just anything
22 they are not supposed to have.

23 Q When you say "fire drill" do you mean something
24 for the prevention and detection of fire?

25 A Yes, sir. We are required to have a fire

1 drill.

2 Q I mean I asked you about "searches" and you
3 told me about "drills", how do the two relate?

4 A While everyone is out we use that opportunity
5 to go ahead and look through, make sure there is not any
6 extra, like I said, blankets or quilts or mattresses.

7 Q How would I get an extra mattress in the jail,
8 Sheriff?

9 A Okay. For instance Billy was, you are in the
10 same cell that you were in and say the jailer goes down
11 there to get Billy and at the same time the secretary
12 calls him and tells him that Mr. Lee has a visitor, the
13 jailer gets detracted and doesn't get Billy to get his
14 mattress out.

15 Q The purpose of that is merely to regather
16 property that you all have disbursed to prisoners?

17 A Part of it.

18 And like I say, any type of contraband
19 that they can get.

20 Q Define "contraband" to me.

21 A Anything a person should not be in possession,
22 it's illegal to have.

23 Q What should you not be in possession of at the
24 jail?

25 A Well, used razor blades, excess food, a lot of

1 them will try to squirrel away processed food that -- try
2 to keep a close watch out on that to keep down germs and
3 cleanliness there, anything that can be made or adapted
4 to be used as a weapon, things of that nature.

5 Q Well, I mean you aren't looking for their, what
6 private belongings they have in jail, there's nothing
7 wrong with a prisoner having a Bible?

8 A No.

9 Q Nothing wrong with him having a diary?

10 A No.

11 Q There's no police interest in a diary?

12 A No.

13 Q There's no fire hazard in a diary?

14 A No.

15 Q In his correspondence with his lawyers and his
16 family there's no police interest in those things?

17 A No.

18 Q So you are searching for materials that could
19 cause fires and to get back the number of mattresses and
20 pillows and such that might accumulate by mistake and
21 error?

22 A And any type of contraband.

23 Q And guns and weapons?

24 A Yes.

25 MR. OLD: Your Honor, without

1 the notebook I don't think I can go any further.

2 THE COURT: I will recess
3 until 9:00 a.m.

4 The last time we talked there was a
5 problem with somebody getting here at 9:00, is that a
6 problem, Randy?

7 MR. LEE: No.

8 THE COURT: 9:00 a.m., we'll
9 be in recess until then.

10 For the record before we close for the
11 day I have granted the Defendant's Motion to Restrict the
12 State's Cross Examination of the Defendant and I am also
13 going to issue a gag order. I do not want the Defendant
14 nor the Defense Attorneys or the State's Attorneys nor
15 any of the witnesses including the Sheriff's Department
16 and deputy, Court personnel to discuss this case with
17 anyone that might be from the press or associated with
18 the press.

19 If you have a doubt as to whether the
20 person is from the press or media just tell them that you
21 have been ordered not to talk about it and if any
22 occasion comes up where you think you need to talk to me
23 about it we'll discuss it.

24 MR. OLD: Being asked where
25 we are, saying we are still in the process of selecting

1 a jury?

2 THE COURT: I don't have a
3 problem with that. I don't want you to discuss the case
4 meaning "evidence" I have no objection to either saying,
5 giving a report to whoever asks where we are in the
6 proceedings, we are here, for instance, "Motions are
7 pending, the Judge has not made a ruling, jury selection
8 is underway", matters that they can discover through
9 public record I don't have a problem with.

10 MR. OLD: I can't say what a
11 great job I'm doing?

12 THE COURT: No. That's not
13 a matter of public record.
14

15 (Record closed for October 17th, 1994.)
16

17 (Whereupon Court was recessed until
18 10:00 a.m., October 18th, 1994.)
19
20

21 *****
22
23
24
25

1 STATE OF TEXAS §
2 COUNTY OF TITUS §

3
4 I, Lloyd E. Billups, CSR #149 and
5 Official Court Reporter in and for the 76th Judicial
6 District, State of Texas, do hereby certify that the
7 above and foregoing contains a true and correct
8 transcription of the proceedings in the above-styled and
9 numbered cause, all of which occurred in open court or
10 in chambers on October 17, 1994 and were reported by me.

11 I further certify that this
12 transcription of the record of the proceedings truly and
13 correctly reflects the exhibits, if any, offered by the
14 respective parties.

15 WITNESS MY HAND this 31ST day of
16 January, 1995.

17 
18 LLOYD E. BILLUPS, CSR #149 & OFFICIAL COURT REPORTER
19 76TH JUDICIAL DISTRICT, STATE OF TEXAS
20
21
22
23
24
25

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